IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

CRL.A.No. 687 of 2006(C)

SC.248/2003 of ADDL. DISTRICT & SESSIONS COURT (ADHOC), FAST TRACT COURT -I PATHANAMTHITTA

CP.21/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

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APPELLANT/ACCUSED:

RAJU, S/O. GEORGE,
C.NO.9150, CENTRAL PRISON, POOJAPPURA,
THIRUVANANTHAPURAM-695 012.

BY ADV. ADV.NIDHI BALACHANDRAN (STATE BRIEF)

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.687 OF 2006

Dated this the 14th day of December, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.248 of 2003 on the file of the Additional District and Sessions (Ad hoc) Fast Track Court - I, Pathanamthitta. He faced trial for the offence punishable under Section 55(a) of the Abkari Act.

2. The prosecution case against the appellant was that on 21.10.2000 at 11.30 A.M. when the Preventive Officers and party of Excise Enforcement and Anti Narcotic Special Squad, Pathanamthitta were on patrol duty, they found the appellant walking towards them carrying a black cannas containing 20 litres of rectified spirit without any authority to possess the same. To prove the case against the appellant, the prosecution examined PWs.1 to 5 and produced Exts.P1 to P7 and MO.1 cannas. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The appellant denied the allegations levelled against him. The trial court, relying on the oral and documentary evidence

adduced by the prosecution, found the appellant guilty under Section 55(a) of the Abkari Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two years. The above conviction and sentence are challenged in this appeal.

3. This appeal is filed through the jail authorities. Since the appellant is not defended by a counsel of his choice, a State Brief has been appointed to defend his case. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant has raised two grounds against the findings entered by the trial court: (i) the court below went wrong in accepting the evidence of the prosecution witnesses who were official witnesses and that no independent witness was examined and (ii) there occurred inordinate delay in producing the contraband article and the sample before the court below for which no explanation was offered by the detecting officer.

5. The prosecution relied on the evidence of PWs.1 and 2, the

Preventive Officers, who were on patrol duty on 21.10.2000. PW.1 deposed before the court below that while he was on patrol duty on 21.10.2000, he saw the appellant coming towards him carrying a black cannas of 22 litre capacity. On seeing the excise party, the appellant tried to escape, but he was stopped and on questioning him, it was revealed that the cannas contained 20 litres of rectified spirit. Since the appellant had no authority or licence to possess the spirit, he was arrested as per Ext.P2 arrest memo and the contraband article was seized on preparing Ext.P1 mahazar in the presence of PW.3, an independent witness. PW.1 further stated that he took sample from the contraband article seized from the appellant and sent the same for chemical analysis and later the appellant and the contraband article were produced before PW.4, the Excise Inspector and on the same day itself, the appellant and the contraband article were produced before the court. The evidence of PW.1 is corroborated by the evidence of PW.2 who had accompanied PW.1 on 21.10.2000. The evidence of PWs.1 and 2 is supported by the evidence of PWs.4 and 5 who continued the investigation and filed the final charge sheet against the appellant on getting the chemical analysis report. Ext.P7 is the chemical analysis report which showed that the sample contained 84.52% by volume of ethyl alcohol. Accepting the evidence of these witnesses, the trial court found that the prosecution had succeeded in

proving that MO.1 cannas seized from the appellant contained rectified spirit.

6. With regard to the contention of the learned counsel appearing for the appellant that the evidence of the official witnesses was not corroborated by any independent evidence, it is seen that PW.3 was an independent witness who was examined to prove the seizure of the contraband article. Though PW.3 turned hostile to the prosecution, he had admitted his signature in Ext.P1 mahazar. The next contention of the learned counsel for the appellant is that there occurred delay in producing the contraband article and the sample before the court. Ext. P6 property list shows that the contraband article was produced before the court on 2.1.2001. But, that delay is not fatal to the prosecution as no suggestion was made to PWs.1, 4 or 5 to the effect that they had not kept the contraband article in proper custody till the same was sent for chemical analysis. Hence, the above contention is not tenable. In the above circumstances, this Court is of the view that the trial court was justified in finding the appellant guilty of the offence.

7. Learned counsel for the appellant now submits that the sentence awarded is excessive. In this context, it has to be noted that the trial court

had already considered this point. The appellant was found guilty by the same court in S.C.No.258 of 2003 for the offence punishable under Section 55(a) of the Abkari Act on the allegation that he was found in possession of 4 ½ litres of rectified spirit. In the above circumstances, this Court is not inclined to interfere with the sentence awarded against the appellant.

The Crl. Appeal is accordingly dismissed, confirming the conviction and sentence passed by the trial court.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.687/2006

JUDGMENT

14TH DECEMBER, 2006